



ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY



State v. Brown (McMullen), CV-03-0255-PR

PARTIES/COUNSEL: Jonathan Wayne McMullen is represented by Robert Hooker and Michael J. Miller. The State of Arizona is represented by Deputy County Attorney Marc Offenhartz. Amicus Curiae Arizona Attorney General is represented by Randall M. Howe. Amicus Curiae Arizona Public Defender Association and Arizona Attorneys for Criminal Justice are represented by James J. Haas and John A. Stookey.

FACTS:

Jonathan McMullen was charged with one count of first-degree murder and two counts of attempted first-degree murder. Pursuant to a plea agreement, on November 26, 2002, McMullen pled guilty to an amended count of reckless manslaughter, and the two attempted first-degree murder counts were dismissed. Judge Michael J. Brown has deferred acceptance of the plea until the time set for sentencing. The plea agreement states that the sentencing range is a minimum of 3 years, a presumptive of 5 years, and a maximum of 12.5 years, pursuant to A.R.S. §§ 13-701, 13-702 and 13-702.01.

In light of Apprendi v. New Jersey, 530 U.S. 466 (2000), the trial court ordered that the State will have to prove to a jury the existence of aggravating factors beyond a reasonable doubt. In a subsequent order, the court held that §§ 13-702 and 13-702.01 are unconstitutional on their face and as applied to this case.

The State filed a special action petition in the Court of Appeals. That court accepted jurisdiction, vacated both of Judge Brown's orders, and later issued its opinion on May 23, 2003, holding "that Apprendi and its progeny neither compel a jury trial for determining aggravating circumstances in a noncapital case under § 13-702 nor render that statute or § 13-702.01 unconstitutional." McMullen filed a Petition for Review by the Arizona Supreme Court. On June 24, 2004, the U.S. Supreme Court decided Blakely v. Washington, 124 S. Ct. 2531 (2004). On June 29, 2004, the Arizona Supreme Court granted McMullen's Petition for Review and ordered supplemental briefing.

ISSUES:

The issues as stated in the Petition for Review are:

1. "Whether A.R.S. §§ 13-702 and 13-702.01, which provide for an increase in the sentence over the sentence specified in A.R.S. § 13-701 if the judge finds certain factors exist, violate the right to a jury trial by delegating to the judge rather than the jury the determination of factors that substantially increase the possible sentence, contrary to Apprendi v. New Jersey, 530 U.S. 466 (2000), and Ring v. Arizona, 536 U.S. 584 (2002)?"

2. “Whether the evidentiary standard of “any evidence” render[s] A.R.S. §§ 13-702 and 13-702.01 unconstitutional because Apprendi requires a jury rather than a judge to determine the existence of aggravating factors beyond a reasonable doubt?”

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